

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JAMES ALLEN PELLOAT	§	
VS.	§	CIVIL ACTION NO. 1:20cv331
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ORDER PARTIALLY ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner James Allen Pelloat, an inmate confined at the Pack I Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed as barred by limitations.

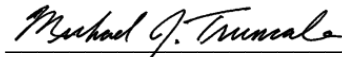
The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. Ordinarily this would require a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). However, on April 7, 2021, petitioner moved to voluntarily dismiss the action.

As the respondent has filed a response, petitioner is entitled to dismiss this action only by court order and on terms the court considers proper, pursuant to Federal Rule of Civil Procedure 41(a)(2). After due consideration, the court is of the opinion that petitioner's motion to dismiss should be granted, and the action should be dismissed without prejudice to petitioner's ability to re-file his claims after exhausting state habeas remedies.

ORDER

For the reasons set forth above, petitioner's motion to dismiss the action is **GRANTED**. Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED** to the extent it recommends dismissal. A final judgment will be entered in this case in accordance with this order.

SIGNED this 12th day of April, 2021.

A handwritten signature in black ink, reading "Michael J. Truncala", is written over a horizontal line.

Michael J. Truncala
United States District Judge